

1 **WO**

2

3

4

5

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8

9 Lee Michael Beitman,

No. CV-17-03829-PHX-JAT

10 Plaintiff,

**ORDER**

11 v.

12 Corizon Health Incorporated, et al.,

13 Defendants.

14

15 Pending before the Court is Plaintiff Lee Michael Beitman’s Motion to Appoint  
16 Counsel (the “Motion”) (Doc. 204) and Defendants’ Response (Doc. 211).<sup>1</sup> For the  
17 following reasons, the Motion is GRANTED.

18 **I. BACKGROUND**

19 Plaintiff previously made four requests for the Court to appoint counsel. (Doc. 18;  
20 Doc. 105; Doc. 167; Doc. 183). The Court denied the September 12, 2018, request without  
21 prejudice. (Doc. 21). The Court denied the August 14, 2019, request “without prejudice if  
22 any of Plaintiff’s claims survive summary judgment.” (Doc. 112). The Court denied the  
23 April 24, 2020, request because “[t]his case [had] been referred to Magistrate Judge Eileen  
24 S. Willett for a settlement conference” and there was no apparent “reason why Plaintiff  
25 [could not] decide, without counsel, whether he should settle the case.” (Doc. 175 at 2).

26

27 <sup>1</sup> Notably, while Defendants do not “assent to the factual averments in the Motion  
28 concerning alleged evidence fabrication,” they do not oppose the appointment of counsel  
for Plaintiff. (Doc. 211 at 1). Defendants request “that the Court extend all remaining dates  
and deadlines” should the Motion be granted. (*Id.*).

1 The Court ruled that Plaintiff may “rais[e] a subsequent request for counsel after the  
 2 settlement conference should the settlement conference not result in settlement and  
 3 dismissal of the case.” (*Id.* at 2–3). The Court denied the July 7, 2020, request for similar  
 4 reasons. Defendants’ Motion for Summary Judgment was denied on March 18, 2020. (Doc.  
 5 162). The settlement conference occurred on August 20, 2020, and the case did not settle.  
 6 (Doc. 199). Per the Court’s August 14, 2019, and April 24, 2020, orders, Plaintiff has raised  
 7 a subsequent request for counsel, which the Court now considers.

## 8 **II. LEGAL STANDARD**

9 There is no constitutional right to the appointment of counsel in a civil case. *Johnson*  
 10 *v. U.S. Dep’t. of Treasury*, 939 F.2d 820, 824 (9th Cir. 1991). In proceedings in *forma*  
 11 *pauperis*, “[t]he court may request an attorney to represent any person unable to afford  
 12 counsel.” 28 U.S.C. § 1915(e)(1). Appointment of counsel under § 1915(e)(1) is required  
 13 only when “exceptional circumstances” are present. *See Terrell v. Brewer*, 935 F.2d 1015,  
 14 1017 (9th Cir. 1991) (citing *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9<sup>th</sup> Cir. 1986)).  
 15 To determine whether exceptional circumstances exist, the Court considers the likelihood  
 16 of success on the merits and the plaintiff’s ability to articulate his claims in view of their  
 17 complexity. *See Wood v. Housewright*, 900 F.2d 1332, 1335 (9th Cir. 1990). These two  
 18 considerations must be analyzed together; neither is dispositive. *Wilborn*, 789 F.2d at 1331.

## 19 **III. ANALYSIS**

20 Here, the Court finds that both factors for determining whether exceptional  
 21 circumstances exist weigh in favor of appointing counsel. This matter presents complex  
 22 legal issues like constitutional violations under the Eighth Amendment, Plaintiff presenting  
 23 his case at a jury trial, which presents numerous procedural complexities, and asserting  
 24 *Monell* claims. (*See* Doc. 204 at 3; Doc. 162 at 2, 8, 19). Due to the complexity of the  
 25 instant matter, Plaintiff, who is confined in the Arizona State Prison system, is unlikely to  
 26 be able to effectively articulate his claims pro se at trial. *See Carson v. Martinez*, No.  
 27 316CV01736JLSBLM, 2019 WL 6218778, at \*1 (S.D. Cal. Nov. 21, 2019) (appointing  
 28 counsel due to an upcoming trial for a plaintiff who “demonstrated an ability to articulate

1 his claims, amend his pleading, engage in discovery, and to partially survive summary  
2 judgment while proceeding without counsel"); *Lewis v. Pugh*, No. C17-5227MJP, 2019  
3 WL 325090, at \*4 (W.D. Wash. Jan. 25, 2019) (holding that, *inter alia*, application of  
4 complex legal doctrine favored appointment of counsel); *Anderson v. Talisman*, No. 1:07-  
5 CV-00715ALAP, 2009 WL 321281, at \*1 (E.D. Cal. Feb. 9, 2009) (holding that limitations  
6 due to imprisonment and constitutional claims at issue favored appointment of counsel).  
7 Thus, the complexity of claims factor weighs in favor of appointing counsel.

8 Plaintiff has also demonstrated a likelihood of success on the merits necessary for  
9 the Court to appoint counsel. “[G]iven that he has already defeated the motion for summary  
10 judgment, [Plaintiff] has adequately demonstrated a likelihood of success on the merits.”  
11 *Lewis*, 2019 WL 325090, at \*4; *see also Hollis*, 2012 WL 5304756, at \*6 (granting motion  
12 to appoint counsel after finding that “it [did] not appear that plaintiff’s claims [were]  
13 patently unmeritorious”). Thus, the likelihood of success factor weighs in favor of  
14 appointing counsel.

15 Accordingly, because Plaintiff has satisfactorily shown likelihood of success on the  
16 merits and a limited ability to articulate his claims in view of their complexity, there are  
17 exceptional circumstances warranting the appointment of counsel. *Wood*, 900 F.2d at 1335.

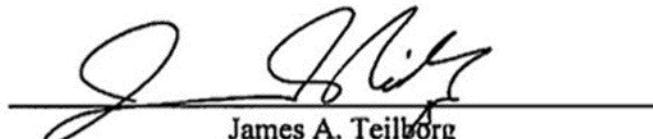
18 **IV. CONCLUSION**

19 Based on the foregoing

20 **IT IS ORDERED** that Plaintiff’s Motion to Appoint Counsel (Doc. 204) is  
21 GRANTED. Daniel M. Staren is appointed as counsel for Plaintiff; the Clerk of the Court  
22 shall send notice to Daniel M. Staren at 400 E Van Buren St #1900, Phoenix, AZ 85004,  
23 and at his email address of record in CM/ECF of this Order; Daniel M. Staren must file a  
24 notice of appearance within 10 days.

25 **IT IS FURTHER ORDERED** that Defendants’ request “that the Court extend all  
26 remaining dates and deadlines” in their Response (Doc. 211) is DENIED.

27 Dated this 10th day of November, 2020.

28   
James A. Teilborg  
- 3 Senior United States District Judge